

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 463X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN KING COUNTY, WA

Decided: May 2, 2013

BNSF Railway Company (BNSF) filed a notice of exemption under 49 C.F.R. § 1152 Subpart F—Exempt Abandonments to abandon a 7.30-mile rail line located between milepost 0.0 at Woodinville and milepost 7.30 at Redmond, King County, Wash. (Redmond Spur). Notice of the exemption was served and published in the Federal Register on September 26, 2008 (73 Fed. Reg. 55,899). The exemption became effective on October 28, 2008. By decision and notice of interim trail use or abandonment (NITU) served on October 27, 2008, the proceeding was reopened and the exemption was made subject to environmental and historic preservation conditions,¹ as well as a trail use condition for King County, a political subdivision of the State of Washington, providing time to negotiate an interim trail use/rail banking agreement with BNSF. By decisions served May 12, 2009, and November 3, 2009, the NITU negotiating period was extended until April 20, 2010. On March 8, 2010, King County filed a notice of consummation of trail use agreement stating that it had entered into a trail use agreement with BNSF.²

On April 2, 2013, King County and the City of Redmond, Wash. (Redmond) (jointly, movants) filed a joint request to partially vacate the NITU issued to King County and to issue a replacement NITU to Redmond as the interim trail sponsor for the portion of the Redmond Spur located between milepost 3.4 and milepost 7.3. Movants indicate that King County will remain the trail sponsor under its existing NITU for the segment of the Redmond Spur between milepost 0.0 and milepost 3.4.

Movants have submitted a copy of the extant NITU, Redmond's statement of willingness to assume financial responsibility for interim trail use and rail banking, and Redmond's

¹ A number of environmental conditions were imposed in the October 2008 decision. By decision served on April 6, 2009, the section 106 historic preservation condition was removed and a new condition addressing inadvertent discoveries was imposed in this proceeding.

² The notice of consummation of trail use agreement also included segments which were subject of abandonment proceedings and NITUs in BNSF Railway Company—Abandonment Exemption—in King County, Wash., Docket No. AB 6 (Sub-No. 464X) and BNSF Railway Company—Abandonment Exemption—in King County, Wash., Docket No. AB 6 (Sub-No. 465X).

acknowledgement that use of the right-of-way for trail purposes is subject to possible future reactivation of the right-of-way for rail service. Movants state that they intend to transfer responsibility for the segment of the right-of-way on or before July 31, 2013. Movants' submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, the request to partially vacate the NITU and issue a replacement NITU will be granted.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on October 27, 2008, is modified to vacate from that NITU the segment of the right-of-way between milepost 3.4 and milepost 7.3.
3. A replacement NITU applicable to Redmond as interim trail sponsor is issued for the segment of the right-of-way between milepost 3.4 and milepost 7.3, effective on the service date of this decision and notice, subject to any environmental conditions that remain in effect.
4. The new trail sponsor is required to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.
5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the new trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.
6. If the new trail sponsor intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.